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**HF 3** – Invasion of Privacy (LSB1116HV)

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Fiscal Note Version – As Amended by House Judiciary Amendment **H-1022**

Requested by Representative Megan Jones

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**Description**

**House File 3** as amended by **H-1022** amends Iowa Code section **709.21**(1)(a) to broaden the criminal offense of invasion of privacy – nudity to eliminate the requirement that the victim have no knowledge of being viewed, photographed, or filmed. Additionally, the penalty for this sex offense is enhanced from a serious to an aggravated misdemeanor. House File 3, as amended by H-1022, also creates a new serious misdemeanor offense of trespass in certain circumstances. This crime is not a sex offense.

**Background**

**Correctional and Fiscal Information**

- Under current law, the crime of invasion of privacy – nudity is a serious misdemeanor sex offense. Broadening the definition and enhancing the penalty will increase convictions for this offense.
- Under current law, the crime of trespass has a graduated system of penalties ranging from a simple misdemeanor to a Class D felony. Creating a new serious misdemeanor offense will increase the likelihood of convictions.
- There were 29 charges disposed in FY 2014 for invasion of privacy – nudity. Of these, 16 were dismissed or acquitted, 13 were convicted, and 11 were convicted as charged. The current conviction rate for the serious misdemeanor offense is 44.8%. There were five offenders convicted under the provisions of Iowa Code section **709.21**; most of them were convicted of multiple charges.
- There were five charges disposed in FY 2014 for trespass. Of these, two were dismissed or acquitted and three were convicted as charged. Additionally, one other defendant was charged with a different offense but pled to trespass. The current conviction rate for trespass is 60.0%.
- Offenders sentenced under Iowa Code chapter **709** are subject to sentencing enhancements because they are sex offenders. These offenders are subject to the requirements of the Sex Offender Registry (SOR) for at least 10 years per Iowa Code chapter **692A**. The SOR is administered by the Department of Public Safety (DPS). See the **Legislative Guide, Sex Offender Registry Law** published by the Legislative Services Agency (LSA) in November 2014 for additional information.
- Sex offenders are also subject to the Special Sentence imposed under Iowa Code chapter **903B**. Offenders on Special Sentence are supervised by the Community-Based Corrections (CBC) District Departments.
- Sex offenders can be revoked from probation, parole, or Special Sentence supervision for technical violations or new convictions. The average length of stay under supervision shown in the table below does not include time served for revocations.
- Sex offenders sentenced to prison are required to participate in a Sex Offender Treatment Program (SOTP). The following table does not include the average length of stay in treatment or the average daily cost of State prison-based SOTP.

- According to the Justice Data Warehouse (JDW), the Criminal and Juvenile Justice Planning Division (CJJPD) of the Department of Human Rights (DHR), and the Department of Corrections (DOC), the following are estimates for sentencing, length of stay under supervision, and costs for sex offenders.

### Corrections Supervision Information for Sex Offenders

	Percent Sentenced to State Prison	Avg Length of Stay in Prison	Marginal Cost per Day	Avg Length of Stay on Parole Including Special Sentence	Percent Sentenced to Probation	Avg Length of Stay on Probation Including Special Sentence	Percent Sentenced to CBC Res. Facility	Avg Length of Stay in CBC Res. Facility	Marginal Cost per Day	Percent Sentenced to County Jail	Avg Length of Stay in County Jail	Marginal Cost per Day
Ser. Misd.	15.7%	6.9 months	\$ 18.92	26.8 months	61.8%	60.0 months	3.4%	5.8 months	\$ 11.55	25.8%	102 days	\$ 15.00
Agg. Misd.	31.5%	12.9 months	\$ 18.92	26.8 months	58.2%	76.3 months	9.6%	5.8 months	\$ 11.55	15.7%	79 days	\$ 15.00

- The percent sentenced to State prison, probation, CBC residential facility, or county jail is 106.7% for serious misdemeanants and 115.0% for aggravated misdemeanants. The disposition of sentences exceeds 100.0% because certain offenders are sentenced to county jail or a CBC residential facility, and then probation supervision.
- The table below shows the estimates for sentencing, length of stay under supervision, and costs for trespassers. Approximately 12.7% of convicted offenders receive a sentence other than correctional supervision, such as community service, a financial penalty, or both.

### Corrections Supervision Information for Trespassers

	Percent Sentenced to State Prison	Avg Length of Stay in Prison	Marginal Cost per Day	Avg Length of Stay on Parole	Percent Sentenced to Probation	Avg Length of Stay on Probation	Percent Sentenced to CBC Res. Facility	Avg Length of Stay in CBC Res. Facility	Marginal Cost per Day	Percent Sentenced to County Jail	Avg Length of Stay in County Jail	Marginal Cost per Day
Ser. Misd.	1.7%	6.9 months	\$ 18.92	7.5 months	51.9%	12.0 months	0.8%	5.8 months	\$ 11.55	32.9%	102 days	\$ 15.00

- Generally, offenders convicted of a sex offense and supervised by a CBC District Department are placed on intensive supervision and gradually progress to normal supervision if they are successful. These offenders are usually placed on electronic monitoring for a period of their supervision as permitted in Iowa Code section [692A.124](#). Sex offenders are required to participate in an SOTP while under CBC supervision. The table below shows supervision lengths of stay and costs that are unique to sex offenders convicted of misdemeanors.

### Information on Sex Offender Supervision in CBC District Departments

Avg Length of Stay on Special Sentence Only	Avg Length of Stay on Intensive Supervision While on Parole or Probation	Avg Daily Cost of Intensive Supervision for Sex Offenders	Avg Length of Stay on Normal Probation or Parole Supervision	Avg Daily Cost for Probation or Parole	Avg Length of Stay on Electronic Monitoring	Avg Daily Cost of Electronic Monitoring Device	Avg Length of Stay in SOTP CBC Only	Avg Daily Cost for SOTP CBC Only
54.9 months	42 months	\$12.80	34.3 months	\$4.26	26.4 months	\$3.15	38.8 months	\$5.08

- Some offenders receive a county jail sentence without a probation sentence. The Special Sentence starts once the county jail sentence is served. They are then placed on CBC supervision.
- The Fifth CBC District Department's State General Fund appropriation includes funds for the statewide command center and electronic monitoring system. Electronic monitoring devices range in cost by type of device. Global Positioning System (GPS) Active devices are \$3.15 per day while GPS Passive devices are \$3.10 per day. Refer to the Electronic Monitoring Report issued by the DOC in October 2014 and published on the General Assembly's website for additional information.

- Approximately 81.2% of the marginal cost per day for CBC residential facilities is paid from local sources, such as offender rent.
- The cost per case for the Indigent Defense Fund is \$600 for a serious misdemeanor and \$1,200 for an aggravated misdemeanor.
- The average cost per case for the Judicial Branch is \$213 for a serious or aggravated misdemeanor. This estimate includes the average time spent on all cases of the given type regardless of how cases are disposed. Most cases are disposed by plea bargaining; only a small percentage is disposed by bench or jury trial. See the ***Fiscal Topic, Jury Trials*** published by the LSA in August 2013 for background information and statistics.

### **Minority Data Information**

Of the five offenders convicted under invasion of privacy – nudity in FY 2014, four were White and one was Hispanic. Two of the four trespassers convicted in FY 2014 were White, one was Black, and the race of one offender was not known.

### **Assumptions**

#### **Correctional and Fiscal Information**

- Charge, conviction, and sentencing patterns and trends will not change over the projection period.
- Prisoner length of stay, revocation rates, plea bargaining, and other criminal justice policies and practices will not change over the projection period.
- The law will become effective July 1, 2015. A lag effect of six months is assumed from the effective date of [HF 3](#) as amended by [H-1022](#) to the date of first entry of affected offenders into the correctional system.
- Offenders currently convicted of a serious misdemeanor sex offense will be convicted of the aggravated misdemeanor sex offense in this legislation. Some criminal cases that do not meet the definition of invasion of privacy – nudity under current law will result in convictions under [HF 3](#) as amended by [H-1022](#). Approximately 50.0% of the dismissed or acquitted charges under current law will become convictions under this legislation.
- Some criminal cases that do not meet the definition of trespass under current law will result in convictions under [HF 3](#) as amended by [H-1022](#). Approximately 50.0% of the dismissed or acquitted charges under current law will become convictions under this legislation.
- Approximately 50.0% of the defendants will be indigent.
- Marginal costs for county jail cannot be estimated due to a lack of data. For purposes of this analysis, the marginal cost for county jails is assumed to be \$15 per day.

**Minority Data Information:** The impact on minorities will be consistent with current data.

### **Summary of Impacts**

#### **Correctional Impact**

The correctional impact on the State prison system, CBC offender population, and county jails is expected to be minimal under the provisions of [HF 3](#) as amended by [H-1022](#).

There will be 20 additional defendants annually charged with invasion of privacy – nudity. Of these, eight will be convicted. Additionally, there will be five offenders currently convicted of a serious misdemeanor sex offense that will become aggravated misdemeanor sex offenders under this legislation. They will remain in the corrections system longer than under current law. This impact is expected to occur in FY 2019 and thereafter, when serious misdemeanants would be expected to be discharged from Special Sentence but will remain under supervision for about 18 more months as aggravated misdemeanants.

The eight new aggravated misdemeanants are expected to be sentenced as follows: four to State prison for about 12 months; two to probation; and, two to a CBC residential facility for about six months and then probation.

There will be two additional defendants annually charged with trespass; one defendant will be convicted. It is expected this offender will be sentenced to probation for approximately one year.

**Minority Impact:** There is no minority impact anticipated under [HF 3](#) as amended by [H-1022](#).

**Fiscal Impact**

The fiscal impact of [HF 3](#) as amended by [H-1022](#) is estimated to be an additional cost of \$24,000 in FY 2016 and \$84,000 in FY 2017. State prison costs are expected to stabilize in FY 2017 at \$28,000 annually. The costs for CBC supervision are expected to level off in FY 2020 at approximately \$69,000 annually. The table below shows the fiscal impact by funding source.

**Estimated Fiscal Impact by Funding Source**

	FY 2016			FY 2017		
	Local Funds	State General Fund	Total	Local Funds	State General Fund	Total
Judicial Branch	\$ 0	\$ 2,000	\$ 2,000	\$ 0	\$ 5,000	\$ 5,000
Indigent Defense	0	7,000	7,000	0	14,000	14,000
State Prison	0	7,000	7,000	0	28,000	28,000
CBC	0	8,000	8,000	3,300	33,800	37,100
Total	\$ 0	\$ 24,000	\$ 24,000	\$ 3,300	\$ 80,800	\$ 84,100

The local funds are expected to be generated by offenders paying residential rent.

**Sources**

Department of Human Rights, Criminal and Juvenile Justice Planning Division  
Department of Corrections  
Office of the State Public Defender  
Office of the State Court Administrator

/s/ Holly M. Lyons

March 18, 2015

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The fiscal note for this bill was prepared pursuant to [Joint Rule 17](#) and the Iowa Code. Data used in developing this fiscal note is available from the Fiscal Services Division of the Legislative Services Agency upon request.

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